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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 2307**
Monique BERWAER et al. : Attorney Docket No. 2004_0980A
Serial No. 10/500,454 : Group Art Unit 1615
Filed June 30, 2004 : Examiner Eric E. Silverman

PHARMACEUTICAL FORMULATIONS
WITH MODIFIED RELEASE

REPLY TO NOTICE OF NON-COMPLIANT AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In the Notice, it is stated that Applicants' response does not specifically address each and every ground of rejection.

More specifically, the Notice states that Applicants' response of November 30, 2005 does not address the rejections of claims 1 to 5 over Sunshine and Kreutner or the rejection of claim 6 over Sunshine, Kreutner and Guy.

The Notice further states that while the response mentions the rejection of claim 6 over Kreutner and Sunshine, no such rejection is of record.

In reply, the rejections of claims 1 to 5 over Sunshine and Kreutner and the rejection of claim 6 over Sunshine, Kreutner and Guy were discussed together on page 5 of the Official Action, as can be seen from the statement at page 5, line 10 of the November 30, 2005 response that "These rejections (emphasis added) are respectfully traversed."

Please note that page 5 of the November 30, 2005 response states, "the rejection employs impermissible hindsight analysis that derived the present invention from Sunshine and Kreutner

and Guy. The rejection has "cherry-picked" features from Sunshine and Kreutner and/or (emphasis added) Guy to reach the target of the present claims."

It is respectfully submitted that the foregoing constitutes a discussion of the rejection of claims 1 to 5 over Sunshine and Kreutner as well as a discussion of the rejection of claim 6 over Sunshine, Kreutner and Guy.

Moreover, with regard to the rejection of claims 1 to 5 over Sunshine and Kreutner, the lack of motivation to combine Kreutner with Sunshine is at least due to the fact that Sunshine relates to a pharmaceutical composition comprising caffeine, while Kreutner is not concerned with caffeine.

Further, with regard to the rejection of claim 6 over Sunshine, Kreutner and Guy, as discussed in the response of November 30, 2005, Guy relates to a time-release pharmaceutical preparation containing aspirin as the active therapeutic agent and efletirizine is not mentioned.

Therefore, one of ordinary skill in the art would not be motivated to combine teachings of Guy's aspirin patent with Sunshine's caffeine patent and Kreutner or any combination of these references, since each reference is specifically focused on a different drug and one of ordinary skill in the art would not be motivated to combine them i.e. one skilled in the art would not be motivated to combine Sunshine and Kreutner to render claims 1 to 5 obvious or Sunshine, Kreutner and Guy to render claim 6 obvious.

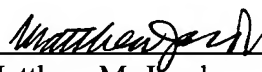
For the foregoing reasons taken with those of November 30, 2005, allowance of this application is respectfully requested.

Respectfully submitted,

Monique BERWAER et al.

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEES FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975

By: _____


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February 2, 2006